

Article 9.

Bond Anticipation, Tax, Revenue and Grant Anticipation Notes.

Part 1. Bond Anticipation Notes.

§ 159-160. Definitions.

As used in this Part, the words "unit" or "issuing unit" means "unit of local government" as defined in G.S. 159-44 or G.S. 159-102, "municipality" as defined in G.S. 159-81, and the State of North Carolina. (1973, c. 494, s. 36; 1981 (Reg. Sess., 1982), c. 1276, s. 9; 1983, c. 554, s. 19; 2003-403, s. 12.)

§ 159-161. Bond anticipation notes.

At any time after a bond order has taken effect and with the approval of the Commission, the issuing unit may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipt of the proceeds of the sale of the bonds, and within the maximum authorized amount of the bond issue. General obligation bond anticipation notes shall be payable not later than seven years after the time the bond order takes effect and shall not be renewed or extended beyond such time, except that, if the issuance of bonds under the bond order is extended by an order of the board of the issuing unit which takes effect pursuant to G.S. 159-64, the bond anticipation notes may be renewed and extended and shall be payable not later than 10 years after the time the bond order takes effect and that, if the issuance of bonds under the bond order is prevented or prohibited by any order of any court, the bond anticipation notes may be renewed or extended by the length of time elapsing between the date of institution of the action or proceeding and the date of its final disposition. Any extension of the time for issuing bonds under a bond order granted by act of the General Assembly pursuant to G.S. 159-64 shall also extend the time for issuing and paying notes under this section for the same period of time. (1917, c. 138, ss. 13, 14; 1919, c. 178, s. 3(13), (14); C.S., ss. 2934, 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, ss. 2, 4; 1969, c. 687, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 33; 1977, c. 404, s. 1; 1979, c. 444, s. 2.)

§ 159-162. Security of general obligation bond anticipation notes.

The faith and credit of the issuing unit are hereby pledged for the payment of each note issued in anticipation of the sale of general obligation bonds according to its terms, and the power and obligation of the issuing unit to levy taxes and raise other revenues for the prompt payment of such notes shall be unrestricted as to rate or amount, notwithstanding any other provisions of law. The proceeds of each general obligation bond issue are also hereby pledged for the payment of any notes issued in anticipation of the sale thereof, and any such notes shall be retired from the proceeds of the bonds as the first priority. In the discretion of the governing board, notes issued in anticipation of the sale of general obligation bonds may be paid from current revenues or other funds instead of from the bond proceeds, but if this is done, the bond order shall be amended to reduce the aggregate authorized principal amount by the amount of the bond anticipation notes and accrued interest thereon. Such an amendment need not be published and shall take effect upon its passage. (1971, c. 780, s. 1.)

§ 159-163. Security of revenue bond anticipation notes.

Notes issued in anticipation of the sale of revenue bonds are hereby declared special obligations of the issuing unit. Neither the credit nor the taxing power of the issuing unit may be pledged for the payment of notes issued in anticipation of the sale of revenue bonds, and no holder of a revenue bond anticipation note shall have the right to compel the exercise of the taxing power by the issuing unit or the forfeiture of any of its property in connection with any default thereon. Notes issued in anticipation of the sale of revenue bonds shall be secured, to the extent and as provided in the resolution authorizing the issuance of such notes, by a pledge, charge, and lien upon the proceeds of the revenue bonds in anticipation of the sale of which such notes are issued and upon the revenues securing such revenue bonds; provided, however, that such notes shall be payable as to both principal and interest from such revenues if not paid from the proceeds of such revenue bonds or otherwise paid. The provisions of G.S. 159-90(b) shall apply to revenue bond anticipation notes as well as to revenue bonds. (1971, c. 780, s. 1; 1979, c. 428; 1985, c. 265, s. 2.)

§ 159-163.1. Security of project development financing debt instrument anticipation notes.

Notes issued in anticipation of the sale of project development financing debt instruments are special obligations of the issuing unit. Except as provided in G.S. 159-107 and G.S. 159-110, neither the credit nor the taxing power of the issuing unit may be pledged for the payment of notes issued in anticipation of the sale of project development financing debt instruments. No holder of a project development financing debt instrument anticipation note has the right to compel the exercise of the taxing power by the issuing unit or the forfeiture of any of its property in connection with any default on the note. Notes issued in anticipation of the sale of project development financing debt instruments may be secured by the same pledges, charges, liens, covenants, and agreements made to secure the project development financing debt instruments. In addition, the proceeds of each project development financing debt instrument issue are pledged for the payment of any notes issued in anticipation of the sale of the instruments, and these notes shall be retired from the proceeds of the sale as the first priority. (2003-403, s. 13.)

§ 159-164. Form of notes to be issued.

Bond anticipation loans shall be evidenced by negotiable notes in bearer form or by certificated or uncertificated registered public obligations pursuant to the Registered Public Obligations Act. Such notes and certificated registered public obligations are hereby declared to be investment securities within the meaning of Article 8 of the Uniform Commercial Code as enacted in this State. Bond anticipation notes may be renewed or extended from time to time, but not beyond the time period allowed in G.S. 159-161. The governing board may authorize the issuance of bond anticipation notes by resolution which shall fix the maximum aggregate principal amount of the notes and may authorize any officer to fix, within the limitations prescribed by the resolution, the rate of interest, the place or places of payment, and the denomination or denominations of the notes. The notes shall be signed with the manual or facsimile signatures of officers designated by the governing board for that purpose, but at least one manual signature must appear on each note (which may be the signature of the representative of the Commission to the Commission's certificate). The resolution shall specify the form and manner of execution of the notes. (1917, c. 138, ss. 13, 14; 1919, c. 178, s. 3(13), (14); C.S., ss. 2934, 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, ss. 2, 4; 1969, c. 687, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 34; 1983, c. 322, s. 9.)

§ 159-165. Sale and delivery of bond anticipation notes.

(a) Bond anticipation notes of a municipality, including special obligation bond anticipation notes issued pursuant to Chapter 159I of the General Statutes, shall be sold by the Commission at public or private sale according to such procedures as the Commission may prescribe. Bond anticipation notes of the State shall be sold by the State Treasurer at public or private sale, upon such terms and conditions, and according to such procedures as the State Treasurer may prescribe.

(b) **(See note)** When the bond anticipation notes are executed, they shall be delivered to the State Treasurer who shall deliver them to the order of the purchaser and collect the purchase price or proceeds. The Treasurer shall then deduct from the proceeds the Commission's expense in connection with the issue, and remit the net proceeds to the official depository of the unit after assurance that the deposit will be adequately secured as required by law. The net proceeds of revenue bond anticipation notes or special obligation bond anticipation notes shall be remitted to the trustee or other depository specified in the trust agreement or resolution securing them. If the notes have been issued to renew outstanding notes, the Treasurer, in lieu of collecting the purchase price or proceeds, may provide for the exchange of the newly issued notes for the notes to be renewed.

(b) **(For effective date, see note)** When the bond anticipation notes are executed, they shall be delivered to the State Treasurer who shall deliver them to the order of the purchaser and collect the purchase price or proceeds. The Treasurer shall then deduct from the proceeds the Commission's expense in connection with the issue, and remit the net proceeds to the official depository of the unit after assurance that the deposit will be adequately secured as required by law. The net proceeds of revenue bond anticipation notes, special obligation bond anticipation notes, or project development financing debt instrument anticipation notes shall be remitted to the trustee or other depository specified in the trust agreement or resolution securing them. If the notes have been issued to renew outstanding notes, the Treasurer, in lieu of collecting the purchase price or proceeds, may provide for the exchange of the newly issued notes for the notes to be renewed. (1917, c. 138, s. 14; 1919, c. 178, s. 3(14); C.S., s. 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, s. 2; 1969, c. 687, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 35; 1983, c. 554, s. 20; 1989, c. 756, s. 7; 2003-403, s. 14.)

§§ 159-166 through 159-167. Reserved for future codification purposes.

Part 2. Tax, Revenue and Grant Anticipation Notes.

§ 159-168. "Unit" defined.

For purposes of this Part, "unit," "unit of local government," or "issuing unit" mean a "unit of local government" as defined by G.S. 159-7(b) and a "public authority" as defined by G.S. 159-7(b). (1973, c. 494, s. 40; 1975, c. 674, s. 2.)

§ 159-169. Tax anticipation notes.

(a) A unit of local government having the power to levy taxes is authorized to borrow money for the purpose of paying appropriations made for the current fiscal year in anticipation of the collection of taxes due and payable within the fiscal year, and to issue its negotiable notes in

evidence thereof. A tax anticipation note shall mature not later than 30 days after the close of the fiscal year in which it is issued, and may not be renewed beyond that time.

(b) No tax anticipation loan shall be made if the amount thereof, together with the amount of tax anticipation notes authorized or outstanding on the date the loan is authorized, would exceed fifty percent (50%) of the amount of taxes uncollected as of the date of the proposed loan authorization, as certified in writing to the governing board by the chief financial officer of the issuing unit. Each tax anticipation note shall bear on its face or reverse the following certificate signed by the finance officer: "This note and all other tax anticipation notes of (issuing unit) authorized or outstanding as of (date) amount to fifty percent (50%) or less of the amount of taxes for the current fiscal year uncollected as of the above date." No tax anticipation note shall be valid without this certificate.

(c) The faith and credit of the issuing unit are hereby pledged for the payment of each tax anticipation note issued under this section according to its terms, and the power and obligation of the issuing unit to levy taxes and raise other revenues for the prompt payment of such notes shall be unrestricted as to rate or amount, notwithstanding any other provisions of law. (1917, c. 138, s. 12; 1919, c. 178, s. 3(12); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 4; 1971, c. 780, s. 1; 1973, c. 494, s. 37.)

§ 159-170. Revenue anticipation notes.

(a) Authorization; Term. – A unit of local government or a nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39, is authorized to borrow money for the purpose of paying appropriations made or expenses budgeted or incurred for the current fiscal year in anticipation of the receipt of revenues, other than taxes, estimated in its budget to be realized or collected in cash during the fiscal year, and to issue its negotiable notes in evidence thereof. A nonprofit corporation or association operating or leasing a public hospital may only borrow money pursuant to this section if it is legally entitled to collect and pledge such revenues to the payment of the notes as provided in this section. A revenue anticipation note shall mature not later than 30 days after the close of the fiscal year in which it is issued, and may not be renewed beyond that time.

(b) Limit on Amount; Disclosure. – No revenue anticipation loan shall be made if the amount thereof, together with the amount of all revenue anticipation notes authorized or outstanding on the date the loan is authorized, would exceed eighty percent (80%) of the revenues of the issuing unit or the nonprofit corporation or association operating or leasing a public hospital, other than taxes, estimated in its budget to be realized or collected in cash during the fiscal year. Each revenue anticipation note shall bear on its face a statement to the effect that it is payable solely from budgeted nontax revenues of the issuing unit or the nonprofit corporation or association operating or leasing a public hospital and that the faith and credit of the issuing unit or, in the case of revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital, the local government unit that owns the public hospital are not pledged for the payment of the note. Each note shall also bear on its face or reverse the following certificate signed by the finance officer: "This note and all other revenue anticipation notes of (issuer) authorized or outstanding as of (date) amount to eighty percent (80%) or less of the budgeted nontax revenues for the current fiscal year as of the above date." No revenue anticipation note shall be valid without this certificate.

(c) Faith and Credit Not Pledged. – Revenue anticipation notes issued under this section shall be special obligations of the issuing unit or the nonprofit corporation or association operating

or leasing a public hospital. Neither the credit nor the taxing power of the issuing unit or, in the case of revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital, the local government unit that owns the public hospital may be pledged for the payment of revenue anticipation notes. No holder of a revenue anticipation note shall have the right to compel the exercise of the taxing power by the issuing unit or, in the case of revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital, the local government unit that owns the public hospital or the forfeiture of any of its property in connection with any default thereon.

(d) Any revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital pursuant to this section are subject to the approval of the city, county, hospital district, or hospital authority which owns the hospital. Approval of the city, county, hospital district, or hospital authority may be withheld only under one or more of the following circumstances:

- (1) The contract would cause the city, county, hospital district, or hospital authority to breach or violate any covenant in an existing financing instrument entered into by such entity.
- (2) The contract would restrict the ability of the city, county, hospital district, or hospital authority to incur anticipated bank eligible indebtedness under federal tax laws.
- (3) The entering into of the contract would have a material adverse impact on the credit ratings of the city, county, hospital district, or hospital authority or otherwise materially interfere with an anticipated financing by such entity. (1917, c. 138, s. 12; 1919, c. 178, s. 3(12); 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 4; 1971, c. 780, s. 1; 1973, c. 494, s. 38; 1999-386, s. 3.)

§ 159-171. Grant anticipation notes.

(a) A unit of local government is authorized to borrow money for the purpose of paying appropriations made for a capital project in anticipation of the receipt of moneys from grant commitments for such capital project from the State or the United States or any agencies of either, and to issue its negotiable notes in evidence thereof. Grant anticipation notes shall mature not later than 12 months after the estimated completion date of such capital project as determined by the governing body of the unit of local government and may be renewed from time to time, but no renewal shall mature later than 12 months after the estimated completion date of such capital project.

(b) No grant anticipation note may be issued if the amount thereof, together with the amount of all other notes authorized or issued in anticipation of the same grant commitment, shall exceed ninety percent (90%) of the unpaid amount of said grant commitment. Each note shall bear on its face a statement to the effect that it is payable solely from moneys received from a described grant and that the faith and credit of the issuing unit are not pledged for the payment thereof, and on its face or reverse the following certificate signed by the finance officer: "This note and all other grant anticipation notes of (issuing unit) authorized or outstanding as of (date) and issued or to be issued in anticipation of (describe grant commitment) amount to ninety percent (90%) or less of the unpaid amount of said grant commitment." No grant anticipation note shall be valid without this certificate.

(c) Grant anticipation notes issued under this section shall be special obligations of the issuing unit. Neither the credit nor the taxing power of the issuing unit may be pledged for the payment of grant anticipation notes, and no holder of such notes shall have the right to compel the exercise of the taxing power by the issuing unit or the forfeiture of any of its property in connection with any default thereon. (1975, c. 674, s. 1.)

§ 159-172. Authorization and issuance of notes.

(a) Notes issued under this Part shall be authorized by resolution of the governing board of the issuing unit. The resolution shall fix the maximum aggregate principal amount of notes to be issued thereunder, and may authorize any officer to fix, within the limitations prescribed by the resolution, the rate of interest, the place or places of payment, and the denomination or denominations of the notes. Notes that are represented by instruments shall be signed with the manual or facsimile signatures of the officers designated by the government board for that purpose, but at least one manual signature (which may be the signature of the representative of the Commission to the Commission's certificate) must appear on each note that is represented by an instrument. Several notes may be issued under one authorization so long as the aggregate principal amount of notes outstanding at any one time does not exceed the limits of the authorization.

(b) Before any notes may be issued pursuant to this Part, they must be approved by the Commission. In determining whether to approve the issuance of notes, the Commission may consider (i) the reasonableness of the budget estimates of the taxes or other revenues in anticipation of which the tax or revenue anticipation notes are to be issued, (ii) the firm and binding character of the grant commitment in anticipation of which the grant anticipation notes are to be issued, (iii) whether the amount of the notes, together with the amount of other authorized or outstanding notes issued or to be issued in anticipation of the same taxes or other revenues or grant commitments, exceeds the limitations prescribed in G.S. 159-169, 159-170 or 159-171 as the case may be, and (iv) any other matters that the Commission considers to have a bearing on whether the issue should be approved. The Commission shall approve the issuance of the notes if, upon the information and evidence it receives, it finds and determines that (i) the issue is necessary and expedient, (ii) the budget estimates of the taxes or other revenues are reasonable or the grant commitment is firm and binding, and (iii) the amount of the notes, together with the amounts of other authorized or outstanding notes issued or to be issued in anticipation of the same taxes or other revenues or grant commitments do not exceed the appropriate limitations prescribed by this Part. An order approving an issue shall not be regarded as an approval of the legality of the notes in any respect.

(c) Notes issued under this Part shall be sold by the Commission at public or private sale according to such procedures as the Commission may prescribe. Each such note that is represented by an instrument shall bear on its face or reverse a certificate signed by the secretary of the Commission or an assistant designated by him that the issuance of the note has been approved under the provisions of The Local Government Finance Act. Such signature may be a manual or facsimile signature as the Commission may determine. Each note that is not represented by an instrument shall be evidenced by a writing relating to such note, which writing shall identify such note or the issue of which it is a part, bear such certificate and be on file with the Commission. The certificate shall be conclusive evidence that the requirements of this Part have been observed, and no note without the Commission's certificate or with respect to which a writing bearing such certificate has not been filed with the Commission shall be valid.

(d) When the notes are executed, they shall be delivered to the State Treasurer who shall deliver them to the order of the purchaser and collect the purchase price or proceeds. The Treasurer

shall also collect from their purchaser the purchase price or proceeds of notes that are not represented by instruments. The Treasurer shall then deduct from the proceeds the Commission's expense in connection with the issue, and remit the net proceeds to the official depository of the unit after assurance that the deposit will be adequately secured as required by law. If the notes have been issued to renew outstanding notes, the Treasurer, in lieu of collecting the purchase price or proceeds, may provide for the exchange of the newly issued notes for the notes to be renewed. (1917, c. 138, s. 14; 1919, c. 178, s. 3(14); C.S., s. 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 4; 1931, c. 293; 1939, c. 231, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 39; 1975, c. 674, ss. 3-5; 1983, c. 322, ss. 10-12.)

§§ 159-173 through 159-175. Reserved for future codification purposes.